

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

YOUNG ADVOCATES FOR FAIR
EDUCATION,

Plaintiff,

Case No. 18 CV 4167

vs.

Judge I. Leo Glasser

ANDREW CUOMO, in his official capacity
as Governor of the State of New York,
BETTY ROSA, in her official capacity as
Chancellor of the Board of Regents of the
State of New York,
MARYELLEN ELIA, in her official capacity
as Commissioner of the New York State
Education Department,

Defendants.

DECLARATION OF PROFESSOR AARON D. TWERSKI

1. I am the Irwin and Jill Cohen Professor of Law at Brooklyn Law School, where I have been teaching since 2007. From 2005 to 2007, I served as the Dean and was a Professor of Law at Hofstra University Law School, and from 1986 to 2005 I was the Francis Newell DeValpine Professor of Law at Brooklyn Law School. Between 1966 and 1985, I taught in several other law schools. I have authored textbooks and numerous law review articles and served as the Co-Reporter for the American Law Institute's Restatement of Torts Third: Products Liability.

2. In 2009, I received the American Bar Association's Tort Trial & Insurance Practice Section Robert B. McKay Law Professor Award, which recognizes law professors who are committed to the advancement of justice, scholarship, and the legal profession in the fields of tort and insurance law. In 2015, I received the William L. Prosser Award from the American

Association of Law School's Torts and Compensation System Section, which is presented to a professor who has made an outstanding contribution to the law of torts during his or her career.

My Chasidic Background and Home

3. In addition to my legal training, I studied extensively at Rabbinical School, and am an ordained Rabbi. I am the product of a Chasidic home – both of my parents were the children of prominent Chasidic Rebbes -- and my own children and grandchildren have been raised in the Chasidic tradition. I am submitting this Declaration to correct the inaccurate portrait – caricature, actually – of the Chasidic community and yeshivas that has been offered to the Court.

The Role of the Yeshiva In the Jewish Community

4. It is impossible to overstate the centrality of yeshivas and the yeshiva system to the growth and vitality of the Orthodox Jewish and Chasidic community. It is fair to say that the dramatic increase in yeshiva enrollment – there are now 165,000 children whose parents enroll them in yeshivas across New York State – does not merely reflect the growth of the Orthodox community but is perhaps the primary factor responsible for that growth.

5. As one noted scholar observed:

In contemporary society...Jewish identity is not inevitable. It is not a matter of course, but of choice: a conscious preference of the enclave over the host society. For such a choice to be made, a sense of particularity and belonging must be instilled by intentional enterprise of instruction. Without education there is no identity, for identity in a multi-culture is ideological. Identity maintenance and consciousness raising are needs that can be met only by education.

Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy." Tradition, Summer 1994.

6. Professor Jack Wertheimer of the Jewish Theological Seminary has written extensively about the role of the yeshiva in the development of the Jewish community:

The day schools of the 20th century are unique, however, in the mission they have been assigned...Up to the middle of the 20th century, it was widely assumed by

Jews of all stripes that Jewishness was something almost innate, and no school was needed to inculcate it...Until midcentury, the children of immigrants on the right [of the Orthodox world] imbibed their religiosity primarily from home and ethnic neighborhood, much as children of their far more numerous brethren on the left and center imbibed their Jewishness from much the same sources. The inability of families to play their accustomed roles and the collapse of ethnic neighborhoods necessitated the creation of a new type of day school movement.

Jack Wertheimer, *Jewish Education in the United States*, American Jewish Yearbook, 1999.

7. After the Holocaust, the American Jewish community set out to rebuild that which had been destroyed in Europe. That effort placed a primary focus on the creation of a network of Jewish day schools across the United States:

Significant growth in day schools began toward the end of World War II, after the founding of a national society called *Torah Umesorah*. It was founded in 1944 for the express purpose of establishing orthodox yeshivas throughout the United States. At the time, there were roughly 30 day schools with an enrollment of between 6,000 and 7,000 student in the entire country and only six were outside of New York City. By the early 1970s, the figure exceeded 67,000 students in 330 day schools. In just three decades, the number of day schools outside of New York rose from six to include every community with a population of more than 7,500 Jews; even among communities with fewer than 5,000 Jews there were 20 day schools.

“Spotlight on Jewish Day School Education.” Jewish Education Service of North America, Summer 2003.

8. Numerous published studies have confirmed that the single most determinative factor contributing to involvement in Jewish life and observing Jewish tradition among adult Jews is whether they attended a Jewish day school as a child. This is true across denominations.

9. The seminal study, published by the Avi Chai Foundation in 1993, concluded that:

Nine years of Jewish education appears to be a turning point in connecting Jewish education with Jewish involvement; and

Jewish day schools are the best vehicle for implementing Jewish involvement and are the only type of Jewish education that stands against the very rapidly growing rate of intermarriage.

Mordechai Rimor and Elihu Katz, “Jewish Involvement of the Baby Boom Generation,” Avi Chai, November 1993.

10. Assessing the data made available by the National Jewish Population Survey, Brandeis professor Sylvia Barack Fishman concluded that:

Extensive Jewish education is definitively associated with every measure of adult Jewish identification. Its impact can be clearly seen in every public and private Jewish life. Younger American Jewish adults (25-44) who have received six or more years of Jewish education are the group most likely to join, volunteer time for, and donate money to Jewish causes, to belong to synagogues and attend services at least several times a year, to seek out Jewish neighborhoods and Jewish friends, to perform Jewish rituals in their homes, to visit and care deeply about Israel, and to marry another Jew.. And they are the group most likely to continue the patten and to provide many years of Jewish education to their children.

Sylvia Barack Fishman, “Jewish Education and Jewish Identity Among Contemporary American Jews: Suggestions from Current Research” (Bureau of Jewish Education, Center for Educational Research and Evaluation, Boston, 1995.

11. This is true even among non-Orthodox Jewish day school graduates. For example, Alvin I. Schiff and Mareleyn Schneider:

surveyed a sample of 8,536 graduates of 26 Jewish day schools in the United States located in 19 communities of various sizes. They found that products of day schools ranging across the denominational spectrum exhibited relatively high levels of Jewish identification.

Schiff and Schneider, “Far Reaching Effects of Extensive Jewish Day School Education: The Impact of Jewish Education on Jewish Behavior and Attitutdes.” Yeshiva University, July 1994.

12. As the foregoing demonstrates, yeshivas are not merely where Jews happen to send their children to school. They are the primary vehicle responsible for inculcating Jewish values, Jewish learning and Jewish living, are responsible for the rebirth of the Jewish community out of the ashes of destruction in Eastern Europe, and are what today ensures and allows for the continuity and growth of the Jewish community in New York and around the country.

The Values and Virtues of a Yeshiva Education

13. In one form or another, I have spent virtually my entire life in educational institutions: beginning as a yeshiva and Rabbinical School student, then as a college and law school student and, since 1966 as a law school professor.

14. There are two distinct elements of a yeshiva education that set it apart from traditional schools and that, in my opinion and experience, make them superior to such schools.

15. First, a yeshiva education provides students with a critical thinking and analytical skills that far surpass those obtained by students at traditional schools. The length of the school day, the depth of the curricular material and the almost-Socratic method employed even in yeshiva elementary schools provide students with training that is valuable to them as adults across disciplines and professions.

16. Second, a yeshiva education places a heavy emphasis on ethical and moral development, as well as cultural identity, traditions, and cohesion. These values may not impress our critics, who focus solely on material success, but they are what matters in life. More significantly, they matter to the thousands of parents who choose each year to enroll their children in yeshivas. There are surely schools whose sole measure of success is the income level of their alumni. But Chasidic parents choose a different measure for their education and for their lives.

17. In any event, yeshiva education is remarkably effective in providing the tools necessary for success in the secular world. Indeed, I would challenge any large-scale secular educational system to match the results accomplished by our schools.

The Successes of Chasidic Yeshiva Graduates

18. There are many examples that demonstrate the value of yeshiva education. For instance, one of the largest and most successful photo and electronic retailers in the United States

is owned and operated by Chasidic Jews who were educated at Chasidic schools in New York. They employ hundreds of workers who deal daily with the most sophisticated buyers of cutting-edge technology in the nation. Chasidic Jews also fill senior information technology, financial and corporate positions there.

19. Chasidim also own major commercial and residential real estate and construction companies. Their work regularly requires them to interact with the nation's most sophisticated financial institutions, architects, and law firms.

20. Our Chasidic community is home to accountants, comptrollers and computer experts who hold high positions in banks and other financial institutions. The number of Chasidic businessmen who regularly travel to Asia is so great that hotels in China, Japan and other countries in the Far East make accommodation for them so that they can observe the Sabbath while there.

21. Manufacturers of everything from plastics, building materials, and every consumer good imaginable are produced by graduates of these much-maligned schools.

22. Chassidic schools also imbue in their students a strong work ethic, and a sense of responsibility for their families. And so many of their graduates fill more traditional blue collar jobs, such as licensed plumbers, electricians and HVAC technicians.

23. This success stems from the rigor of the education they receive. In studying Talmud, the students develop analytical skills and critical thinking of the highest order. This is the essence of a most demanding curriculum. Students learn to analyze and critique text with precision. They learn how to analogize and how to recognize false lines of logic. They enter the business world with skills that not only equal but are more often superior to those taught in secular schools. They accomplish this even though English is a second language to many of our students, who are raised in Yiddish-speaking homes.

24. As the Harvard scholar Harry Austryn Wolfson has described, the study of Talmud is, “the application of the scientific method to texts.” He explains that in the Talmud:

Statements apparently contradictory to each other will be reconciled by the discovery of some subtle distinction, and statements apparently irrelevant to each other will be subtly analyzed into their ultimate elements and shown to contain some common underlying principle. The harmonization of apparent contradictions and the interlinking of apparent irrelevancies are two characteristic features of the Talmudic method of text study. And similarly every other phenomenon about the text becomes a matter of investigation. Why does the author use one word rather than another? What need was there for the mentioning of a specific instance as an illustration? Do certain authorities differ or not? If they do, why do they differ?

All these are legitimate questions for the Talmudic student of texts. And any attempt to answer these questions calls for ingenuity and skill, the power of analysis and association, and the ability to set up hypotheses - and all these must be bolstered up by a wealth of accurate information and the use of good judgment. No limitation is set upon any subject; problems run into one another; they become intricate and interwoven, one throwing light upon the other. And there is a logic underlying this method of reasoning. It is the very same kind of logic which underlies any sort of scientific research, and by which one is enabled to form hypotheses, to test them and to formulate general laws.

Harry Austryn Wolfson, *Crescas' Critique of Aristotle*. Cambridge, Massachusetts: Harvard University Press. 1929.

The Causes of Poverty in the Chasidic Community

25. Critics of Chasidim like to note that there is poverty in our community. But it is simplistic and inaccurate to suggest that the emphasis on Jewish studies is at the root of those financial challenges. It is common for husband and wife to earn between \$75,000 and \$100,000 annually yet struggle because large families are common. That is a choice made of religious conviction, not the product of inadequate education.

26. There is also a cadre of scholars who devote their lives to the study and teaching of Torah. They serve as the intellectual and spiritual leaders of our community. They are charged with the responsibility of dealing with the complexities of modern society according to the

tradition of the ages. Their responsibilities run the gamut from resolving controversies arising from complex business disputes according to Jewish law to advising families and physicians about end-of-life issues. The rewards for this type of work are more spiritual than temporal.

27. Job discrimination is also a major factor. Many employers refrain from hiring Chasidim, not because they lack the ability but because the employers simply do not want Chasidim in their offices or as the face of their company. It is ironic that critics of Chasidic schools, who profess to be looking out for the well-being of Chasidim, are not focusing their efforts on this discrimination. Those who complain about Chasidic poverty should be on the front lines of the battle to ensure that job opportunities are available to willing and able Chasidim.

28. Our graduates have been successful in utilizing what they have been taught, both in their Jewish and secular studies departments, and have been successful in building remarkable careers, businesses and institutions. Critics of our educational system are blissfully ignorant of the enormous successes it has produced. What they really seek to take issue with is our value system, one that is in dissonance with that of the secular society that surrounds us.

Conclusion About the Superiority of Yeshiva Education

29. I am a life-long educator whose contributions and commitment to excellence have been recognized by the secular world, and I am convinced that yeshivas offer a superior education. Others might look to our Yeshiva system for its excellence in teaching the most important of all skills: how to reason, analyze problems and construct a moral and ethical framework for life.

30. The sentiments that I express here were not formulated recently, nor do they find their main expression in this Declaration. Of far greater significance, my wife and I enrolled our own children in Chasidic schools, and we are pleased that they have chosen to enroll our grandchildren in Chasidic schools as well.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my knowledge.

Executed this 5th day of October 2018, at BROOKLYN, New York.


AARON TWERSKI